

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OSCAR F. JIMINEZ and U.S. POSTAL SERVICE,
POST OFFICE, El Paso, TX

*Docket No. 02-1035; Submitted on the Record;
Issued November 8, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On May 14, 1998 appellant, then a 40-year-old postal supervisor, filed a notice of occupational disease alleging that he suffered from stress, anxiety, panic attacks and diabetes as a result of his federal employment. On January 9, 1998 appellant had an "incident" with an employee when he instructed her to work overtime and she became argumentative and began to question his instructions. He walked away from the employee telling her: "talk to your supervisor." As a result, the employee followed appellant and started verbally assaulting him, resulting in a disruption on the workroom floor. Appellant submitted a written statement to the employing establishment, on January 14, 1998, stating that he refused to work near this employee and refused to work at all until corrective measures were taken against her. On March 9, 1998 the employing establishment charged him with failure to perform his supervisory duties and proposed to reduce his pay and grade since he allowed a disruption to occur on the workroom floor. Appellant alleged that the January 9, 1998 incident caused him to become very upset, have esophageal pain, headaches and problems of excessive urination. He also stated that his supervisor contacted him while he was on sick leave and asked him to come in to work to discharge an employee who was not under his direct supervision.

By decision dated January 26, 1999, the Office of Workers' Compensation Programs denied appellant's emotional condition claim finding that he did not identify any compensable factors of employment.

Appellant requested an oral hearing. By decision dated December 17, 1999, the hearing representative affirmed the Office's February 26, 1999 decision.

By letter dated December 5, 2000, appellant requested reconsideration and alleged several additional factors of employment, including that the number of employees he supervised had significantly increased.

By decision dated March 5, 2001, the Office denied appellant's request for modification of its previous decision finding that he had not established any compensable factors of employment.

The Board finds that appellant has not established that he sustained an emotional condition while in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

The initial question presented is whether appellant has substantiated a compensable factor of employment as contributing to his emotional condition;³ if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁴

In this case, appellant alleged that the following factors contributed to his stress, anxiety, panic attacks, diabetes, esophageal pain, headaches and other physical ailments: (1) On January 1, 1998 he instructed an employee to work overtime and she became argumentative and began to question his instructions. Appellant walked away and told her to talk to her supervisor. She followed appellant and began calling him names and questioning his instructions, which resulted in a disruption on the workroom floor; (2) On January 14, 1998 appellant submitted a written statement to his employing establishment stating that he refused to work near the employee and refused to work at all until corrective measures were taken against her; (3) On

¹ *Mary Boylan*, 45 ECAB 338 (1994).

² *Vaile F. Walders*, 46 ECAB 822 (1995).

³ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁴ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

March 9, 1998 his employing establishment proposed to reduce his pay and grade for allowing the January 1, 1998 workplace disruption to occur; (4) the number of employees he supervised increased; and (5) his manager called him when he was on sick leave and asked him to discharge an employee who was not under his direct supervision.

Appellant alleged that the January 9, 1998 workplace disruption contributed to his emotional condition. On that day, appellant was exercising his duties as a supervisor by instructing his employee to work overtime and as a result the employee became belligerent and started a verbal altercation with appellant. The Board finds that appellant was in the performance of his duties when giving instructions to the employee. The incident and consequences of the incident involved appellant's job duties and responsibilities as a supervisor. It is a well-settled principle that where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ The employing establishment contends, however, that appellant was not in the performance of his duties because he walked away from the employee and told her "go talk to your supervisor," thereby resulting in the workplace disruption. The employing establishment maintains that as a supervisor amongst employees, appellant should have resolved the situation. The Board finds that while appellant may be subject to discipline for his failure to handle the situation appropriately under postal regulations and procedures, this does not defeat his claim for compensation. For this reason, the Board finds that appellant established a compensable factor of employment.

Second, appellant alleged that when he informed his employing establishment that he refused to work near the employee and refused to work at all until corrective measures were taken against her, his supervisor and peers were unsupportive of his request and this contributed to his emotional condition. The Board notes that the assignment of an employee to a specific work location is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.⁶ Since appellant's work location is an administrative function of the employing establishment, his emotional reaction to how the employing establishment responded to his request is not covered under the Act and is not a compensable factor of employment.

Appellant also alleged that the employing establishment's March 9, 1998 proposal to reduce his pay and grade contributed to his emotional condition. The employing establishment's proposal to reduce his pay is an administrative function and the employing establishment has discretion whether to reprimand an employee for refusing to perform his job. The employing establishment's notified appellant that he was being reprimanded because as a supervisor, he failed to control a disruptive situation in the workplace. As a general rule, a claimant's reaction to an administrative or personnel matter falls outside the scope of the Act.⁷ The Board also notes that appellant's employing establishment later rescinded the proposal to reduce his pay and his pay and grade remained the same.

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Peggy R. Lee*, 46 ECAB 527 (1995).

⁷ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

Appellant also alleged that his duties as a supervisor increased and that he was responsible for twice the number of employees as the average supervisor. He stated that his employer had a 16:1 or 20:1 employee-supervisor ratio and alleged that he supervised 36 to 38 employees on a regular basis. Appellant submitted a form entitled “narrative of work accomplishments” stating that he supervised 36 employees, however, the Board notes that this form was completed by appellant himself to be considered for a performance evaluation and cannot be considered as objective evidence. A manager from appellant’s employing establishment submitted a letter stating that the plants were maintaining a 1:20 staffing ratio of supervisors to employees and that the work hour ratio was actually 1:16. The employing establishment also attested, on May 15 and May 26, 1998, that appellant did not have an increase in employee supervision. His manager stated that beginning in 1993, appellant was responsible for supervising a crew of 18 employees daily, during which time the number of employee’s was actually decreasing. Even though the Board has held that overwork may be a compensable factor of employment,⁸ the Board finds that appellant’s allegation of an increased workload is not supported by sufficient evidence. The employing establishment also maintains that appellant’s supervisor to employee ratio was within the guidelines established by the agency. As such, appellant’s allegations of an increased workload is not a compensable factor of employment under the Act.

Lastly, appellant alleged that he was on sick leave when his manager called him to work to discharge an employee who was not under his direct supervision. The manager specifically asked appellant to bring a doctor’s note stating that he was capable of returning to work. Once again, this is an administrative matter involving both the discretion of the employing establishment and appellant’s required work duties and is not a compensable factor under the Act. Appellant’s employing establishment informed him that as a supervisor, he was responsible for the everyday administration of work rules and regulations, maintaining an efficient operation and directing employees in the performance of their duties. They also informed him that the fact that an employee is not under his direct supervision does not relieve him of his responsibility for managing the unit and enforcing the employing establishment’s regulations.

Since appellant has established a compensable factor of employment, the Board will address the medical evidence pertaining to this factor only.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

⁸ *William P. George*, 43 ECAB 1159 (1992).

⁹ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

The physicians of record generally refer to a “work incident” and state that it aggravated appellant’s condition, but they do not describe the incident or say when it occurred. There is also no rationalized medical opinion evidence of record explaining how this “incident” may have caused or contributed to appellant’s condition. Several physicians of record also refer to a “situation” and general stress at work and state that they also contributed to his condition, but general statements such as these are insufficient to establish causal relationship. Appellant’s physicians do not describe the “work incident” or the “situation” or explain how they caused or aggravated his condition. Appellant’s burden includes providing rationalized medical opinion evidence showing that the compensable factor of employment occurring on January 9, 1998, specifically caused or contributed to his emotional condition. Since the record is void of such evidence, the Board finds that the Office properly denied appellant’s claim for compensation benefits.

The March 5, 2001 decision of the Office of Workers’ Compensation Programs is affirmed, as modified.

Dated, Washington, DC
November 8, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member